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EXAMINER

ZURITA, JAMES H

| ART UNIT | PAPER NUMBER |
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3625

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/507,262

Applicant(s)

WALKER ET AL.

Examiner

James H. Zurita

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 98-111,113-125,127-137,139-150,152-165,167-179,181 and 182 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 98-111,113-125,127-137,139-150,152-165,167-179,181 and 182 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Prosecution History

On 18 February 2000, Applicant filed the instant application with claims 1-97. A preliminary amendment cancelled claims 1-97 and added claims 98-181.

On 22 August 2002, the Examiner rejected claims 98-181.

On 4 March 2003, Applicant filed a response.

On 28 May 2003, the Examiner rejected all claims in a Final Rejection.

On 2 December 2003, Applicant requested Continued Examination.

On 6 March 2004, the Examiner reopened prosecution, rejecting claims 98-181.

On 20 September 2004, Applicant filed a Notice of Appeal.

On 5 April 2005, applicant filed a second Request for Continuing Examination.

On 20 November 2005, the Examiner requested applicant to correct the claims.

On 2 February 2006, applicant submitted corrected claims.

The present Office Action is a response to this request.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 5 April 2005 has been entered.

Response to Amendment

On 5 April 2005, applicant amended claims 165 and 179 and added claim 182.

Claims 98-111, 113-125, 127-137, 139-150, 152-165, 167-179 and 181-182 are pending and will be examined.

Priority

Applicant has claimed priority for the present application as being a Continuation-in-Part to a series of prior applications which cover a wide range of subject matter and have little, if any, pertinence to the present application. The Examiner requests the Applicant identify where in the prior applications the features of the present invention are first disclosed. Since the prior applications also list different inventors than the present application (but with at least one common inventor), the examiner also requests the Applicant identify which inventor(s) contributed which features claimed in the present application that were also present in one or more prior application with different inventors.

The instant application, filed 18 February 2000 (Walker, Schneirer, Jorasch, Case), is a *continuation* of 09443158, filed 18 November 1999 Walker, Schneirer, Jorasch, Case), now abandoned, which is a *continuation* of 08889319, filed 8 July 1997 (Walker, Schneirer, Jorasch, Case), issued on 4 July 2000 as US 6085169, which is a ***continuation in part*** of 08707660, filed 4 September 1996 (Walker, Schneirer, Jorasch), issued on 11 August 1998 as US 5794207.

Some descriptions were introduced in the instant application by preliminary amendment of 18 February 2000, page 2, lines 1-6.

In one embodiment, the buyer selects the subject of the goods he wishes to purchase by selecting from a list of possible subjects. Subjects might include airline tickets, hotel rooms, rental cars, insurance, mortgages, clothing, etc. After the subject is selected, a form is displayed on a video monitor of a buyer interface. This form is an electronic contract with a *number of blanks* to be filled out by the buyer, with each blank representing a condition of a CPO [emphasis added]

Claims directed to predefined sequence (e.g. claim 99), historical acceptance (e.g., claim 100), seller-negotiated priorities (e.g., claim 101), commission rates (e.g., claim 102) have a priority date of 8 July 1997.

Claim Objections

Claims 164 and 178, concerning ***payment...guaranteed*** do not further limit their parent claims.

Claim Rejections - 35 USC § 112

Claims 98, 113, 127, 139, 152, 164, 168 and 178 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant does not explain how a payment is guaranteed. For purposes of Examination, the term will be given its broadest reasonable interpretation to include payments made with a payment card issued to a person with a satisfactory credit rating for making retail purchases, such as a credit card.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 98-111, 113-125, 127-137, 139-150, 152-165, 167-179 and 181-182 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charles **Boisseau**, 'Netting cheap fares/Some are taking cyberspace route; [3 STAR Edition], Houston Chronicle (pre-1997 Fulltext), Houston, Tex.: Aug 16, 1996, 4 pages, downloaded from ProQuest Direct on the Internet on 10 April 2006 in view of Chung (US 5,644,721), filed on 30 August 1995 and issued 1 July 1997.

As per claim 98, drawn to a system, **Boisseau** discloses systems and methods for using a computer to process the sale of travel services. **Boisseau** discloses:

Server(s) providing **web** page(s) accessible by customers. See, for example, references to an airline's site on the World Wide Web, page 2, paragraph 11, "Airlines some time ago discovered that the Internet...Airlines...use their sites on the World Wide Web to provide thousands of pages..."

Storage device(s) storing program(s), including programs that provide travel information to customers, as in page 2, paragraph 2, "The latest wrinkle..."

Processor(s) (inherent in computers) in communication with the storage device. **Boisseau** discloses that processors obtain stored flight and seat inventory information and display the information to customers using server(s). The processors also:

- **receive** conditional purchase offer(s) including an offer price from a customer utilizing a **web** page for purchasing travel services. See, for example, references to

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submitting a bid for travel services such as airline seats, as in Abstract, "The airline received 14,760 bids..."

- **receive a payment identifier** specifying a financial account for use ["...customers pay with a credit card..."] in providing guaranteed payment [in that payments are charged to a customer's credit card] for said travel services if said conditional purchase offer is accepted;
- **comparing** the conditional purchase offer with
 - seller inventory (see, for example, references to seats and selling inventory that would otherwise go empty, such as first-class seats, "An often heard analogy...On average, nearly two-thirds of an airline's seats go empty...") and
 - pricing information (see Abstract, for example, for references to full price for first class seats, \$475 paid + \$3700 saved = \$4175 total)
 - stored on a central reservation system (see references to American Airlines reservations and to providing flight information. The information is stored at central reservations systems)
 - to determine if said conditional purchase offer is acceptable (see, for example, Abstract, and references winning bidder).
- **Accept** said conditional purchase offer on behalf of the seller. See, for example, references to winning bidder, as in the Abstract.
- **Notify** the customer of acceptance of said conditional purchase offer. See, for example, references to posting and winning bids, as in Abstract.

As per claim 98, Boisseau **does not** specifically disclose common back office procedures such as creating a passenger name record and transmitting the PNR to a CRS. Chung discloses creating a passenger name record; See, for example, at least Col. 10, lines 17-23. Chung also discloses transmitting a PNR to a CRS. See, for example, at least Col. 10, lines 29-43.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Boisseau and Cheung to disclose creating a passenger name record, Transmitting a PNR to a CRS.

One of ordinary skill in the art at the time the invention was made would have been motivated to combine Boisseau and Cheung to disclose creating a passenger name record, Transmitting a PNR to a CRS for the obvious reason that central reservations systems may be used to track inventory on travel services such as flights.

As per claim 99, *Boisseau* discloses accessing information on CRS for each seller in a predefined sequence. See, for example, page 5, first paragraph, "...listing the latest specials on fares to selected markets for trips ..."

As per claim 100, Boisseau **does not** specifically disclose that predefined sequence is based upon the historical acceptance rate of each seller. Cheung discloses historical tracking of seller acceptances, and providing the information for future presentation and selection. See, for example, Col. 1, line 40-50. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Boisseau and Chung to disclose that predefined sequence is based upon the historical acceptance rate of each seller. One of ordinary skill in the art at the time the

invention was made would have been motivated to combine Boisseau and Chung to disclose that predefined sequence is based upon the historical acceptance rate of each seller for the obvious reason that in this way, a company may analyze its need and make the information available to its accounting systems.

As per claim 101, *Boisseau* discloses that predefined sequence is based upon seller-negotiated priorities. See, for example, page 3,

...broader trend sweeping the airline industry to lower costs through various forms of electronic ticket sales and distribution...The airlines' new distribution systems for the first time will offer the opportunity to sell its very perishable seat product...

As per claim 102, Boisseau *does not* specifically disclose that a predefined sequence is based upon the commission rates paid by sellers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Boisseau to disclose that a predefined sequence is based upon the commission rates paid by sellers. One of ordinary skill in the art at the time the invention was made would have been motivated to extend Boisseau to disclose that a predefined sequence is based upon the commission rates paid by sellers for the obvious reason that as sellers try to cut distribution costs, companies such as travel agencies would wish to know which sellers pay higher commission rates. Entities such as agencies would wish to get more money by offering seats on the airlines that pay them more.

As per claim 103, Boisseau *does not* specifically disclose that a **CPO** [a bid] includes an expiration date. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Boisseau to disclose that a bid includes an expiration date, such as the date and time of departure of a flight. One of ordinary skill in the art at the time the invention was made would have been motivated

to extend Boisseau to disclose that a bid includes an expiration date, such as the date and time of departure of a flight for the obvious reason that a bidder may wish to apply his money to alternate plans for a particular weekend, perhaps by putting a bid in for a different location.

As per claim 104, Boisseau discloses that seller inventory and pricing information includes seller-defined rules. See, for example, rules such as round trips to Houston for \$129.price; "...deals are heavily restricted..."

As per claim 105, Boisseau discloses that a customer accesses **web** page(s) [...sites on the World Wide Web...] Boisseau **does not** specifically disclose the use of a **web** browser for such access. Official Notice is taken that it is old and well known to access web pages with browsers. It would have been within the skill of one of ordinary skill in the art at the time the invention was made to access web pages using web browsers. One of ordinary skill in the art at the time the invention was made would have been motivated to use a web browser to access web pages for the obvious reason that permit a user to view documents on the World Wide Web.

As per claim 106, Boisseau **does not** specifically disclose that a customer accesses **web** page which displays an electronic form containing a number of blanks to be filled out by the customer, the blanks representing conditions of the **CPO**. Official Notice is taken that documents on the World Wide Web, disclosed by Boisseau, are structured with format codes using HTML, whose basic set of features include interactive forms that include blanks to be filled out by customers. It would have been obvious to one of ordinary skill at the time the invention was made to include blank

fields representing conditions of a CPO. One of ordinary skill in the art at the time the invention was made would have been motivated to include blank fields representing conditions of a CPO for the obvious reason that the blanks permit a customer to enter information in prescribed formats, thereby producing an enhanced shopping experience.

As per claim 107, Boisseau **does not** specifically disclose that the financial account is a debit account. Official Notice is taken that the use of debit accounts is notoriously well known. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Boisseau and general knowledge to disclose that a financial account is a debit account. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Boisseau and general knowledge to disclose that a financial account is a debit account for the obvious reason that some customers may prefer to use debit accounts.

As per claim 108, Boisseau discloses that financial account is a credit account [“...customers pay with a credit card...”]

As per claim 109, Boisseau **does not** specifically disclose that processor is further operative to pre-authorize offer price of **CPO** with a financial clearinghouse. Official Notice is taken that it was well known to pre-authorize/validate proposed credit card payments with a financial clearinghouse. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Boisseau with knowledge of one of ordinary skill in the art at the time the invention was made to disclose that a processor is further operative to pre-authorize an offer price of **CPO** with a financial clearinghouse. One of ordinary skill in the art at the time the invention was

made would have been motivated to combine Boisseau with knowledge of one of ordinary skill in the art at the time the invention was made to disclose pre-authorizing/validating an offer price of **CPO** [a bid] with a financial clearinghouse for the obvious reason that it's important to verify that a customer has sufficient funds available from a pre-approved credit line.

As per claim 110 Boisseau discloses that goods or services includes at least one of an airline ticket, an automobile, insurance, computer equipment and a hotel accommodation. See references to airline seats, as in Abstract.

As per claim 111, Boisseau **does not** specifically disclose that processor is further operative with program to obtain pre-authorization to charge financial account for travel services prior to consideration of the **CPO**.

Claim 113 is rejected on the same grounds as claim 98.

Claim 114 is rejected on the same grounds as claim 99.

Claim 115 is rejected on the same grounds as claim 100.

Claim 116 is rejected on the same grounds as claim 101.

Claim 117 is rejected on the same grounds as claim 102.

Claim 118 is rejected on the same grounds as Claim 103.

Claim 119 is rejected on the same grounds as claim 104.

Claim 120 is rejected on the same grounds as claim 105.

Claim 121 is rejected on the same grounds as claim 106.

Claim 122 is rejected on the same grounds as claim 107.

Claim 123 is rejected on the same grounds as claim 108.

Claim 124 is rejected on the same grounds as claim 109.

Claim 125 is rejected on the same grounds as claim 111.

Claim 127 is rejected on the same grounds as claim 98.

Claim 128 is rejected on the same grounds as claim 99.

Claim 129 is rejected on the same grounds as claim 100.

Claim 130 is rejected on the same grounds as claim 101.

Claim 131 is rejected on the same grounds as claim 102.

Claim 132 is rejected on the same grounds as Claim 103.

Claim 133 is rejected on the same grounds as claim 104.

Claim 134 is rejected on the same grounds as claim 107.

Claim 135 is rejected on the same grounds as claim 108.

Claim 136 is rejected on the same grounds as claim 109.

Claim 137 is rejected on the same grounds as claim 111.

Claim 139 is rejected on the same grounds as claim 98..

Claim 140 is rejected on the same grounds as claim 99.

Claim 141 is rejected on the same grounds as claim 100.

Claim 142 is rejected on the same grounds as claim 101.

Claim 143 is rejected on the same grounds as claim 102.

Claim 144 is rejected on the same grounds as Claim 103.

Claim 145 is rejected on the same grounds as claim 104.

Claim 146 is rejected on the same grounds as claim 107.

Claim 147 is rejected on the same grounds as claim 108.

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Claim 148 is rejected on the same grounds as claim 109.

Claim 149 is rejected on the same grounds as claim 110.

Claim 150 is rejected on the same grounds as claim 111.

Claim 152 is rejected on the same grounds as claim 98.

Claim 153 is rejected on the same grounds as claim 99.

Claim 154 is rejected on the same grounds as claim 100.

Claim 155 is rejected on the same grounds as claim 101.

Claim 156 is rejected on the same grounds as claim 102.

Claim 157 is rejected on the same grounds as Claim 103.

Claim 158 is rejected on the same grounds as claim 104.

Claim 159 is rejected on the same grounds as claim 105.

Claim 160 is rejected on the same grounds as claim 106.

Claim 161 is rejected on the same grounds as claim 107.

Claim 162 is rejected on the same grounds as claim 108.

Claim 163 is rejected on the same grounds as claim 109.

As per claim 164, see references to credit cards, as in claim 98.

Claim 165 is rejected on the same grounds as claim 111.

Claim 167 is rejected on the same grounds as claim 149.

Claim 168 is rejected on the same grounds as claim 98.

Claim 169 is rejected on the same grounds as claim 153.

Claim 170 is rejected on the same grounds as claim 100.

Claim 171 is rejected on the same grounds as claim 101.

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Claim 172 is rejected on the same grounds as claim 102.

Claim 173 is rejected on the same grounds as claim 103.

Claim 174 is rejected on the same grounds as claim 104.

Claim 175 is rejected on the same grounds as claim 107.

Claim 176 is rejected on the same grounds as claim 108.

Claim 177 is rejected on the same grounds as claim 163.

Claim 178 is rejected on the same grounds as claim 164.

Claim 179 is rejected on the same grounds as claim 111.

Claim 181 is rejected on the same grounds as claim 149.

Response to Arguments

On page 15, line 10-page 16, line 17, Applicant purports to traverse Official

Noticed facts. In response, the Examiner respectfully asserts that

- (a) Examiner's use of *Official notice* is proper and correct and has been judiciously applied.
- (b) all facts noted by the Examiner are well-known and are part of knowledge generally available to one of ordinary skill in the art
- (c) the technical line of reasoning underlying the Examiner's decision to take Official Notice is clear is Unmistakable.
- (d) Officially noted facts serve only to fill in the gaps in an insubstantial manner.
- (d) applicant has not specifically pointed out supposed errors in the Examiners action (see above)
- (c) the combination of prior art and the knowledge generally available to one of ordinary skill in the art is correct.
- (d) applicant has been provided with ample opportunity and time to challenge officially noted features.
- (e) applicant has again actively elected to not challenge and traverse features Officially Noticed.

Again, a “traverse” is a denial of an opposing party’s allegations of fact.¹ The Examiner respectfully submits that applicants’ comments relating to a waived “...right to request documentary evidence ...” **do not** traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made.

Even if one were to interpret applicants’ arguments and comments as constituting a traverse, applicants’ arguments and comments do not constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner’s notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

Applicant clearly recognizes that the Examiner has taken Official Notice of certain facts. Applicant admits, page 16, line 11, that the Examiner supports such Officially Noticed facts by specific cites to various references. Applicant has not argued or shown that the facts are incorrect, or that the supporting cites are wrong. For example, for Officially Noticed facts appearing on pages 4-5 of the last office action, Applicant has never argued or shown that:

- a system is **not** user-friendly when the system can determine how to access inventory according to specific criteria.
- a system may **not** access inventory according to seller-negotiated priorities.

¹ Definition of Traverse, Black’s Law Dictionary, “In common law pleading, a traverse signifies a denial.”

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03
Reliance on Common Knowledge in the Art or "Well Known" Prior Art.

Applicant argues:

Applicants note that MPEP 2144.03 is quite clear in that Official Notice is to be used in limited circumstances". While 'official notice' may be relied on, those circumstances should be rare when an application is under Final rejection or action under 37 CFR 1.113". (Emphasis added).

In response to these arguments, the Examiner notes that he uses Official Notice in limited circumstances. The Examiner also respectfully reminds applicant that the only final rejection to date was on 28 May 2003. Recent rejections have accepted Officially Noted items without dispute, and are admitted prior art.

On page 16, lines 15-17, Applicant purports to reserve certain "rights"

Pending the Examiner's clarification of this issue, Applicants reserve the right to request documentary evidence in support of certain of the Examiner's positions, in accordance with MPEP 2144.04(C).

In response, the Examiner notes that applicant waived such "rights" by failing to adequately and timely traverse facts that applicant clearly recognized as having been officially noted. In view of applicant's admitted failure to seasonably traverse official notice, the items noted in the previous Office Action, for example on pages 4-7, are admitted prior art. The MPEP does not appear to provide for exceptions.

On page 19, lines 4-13, Applicant appears to argue commercial success of his claimed invention. The Examiner notes that applicant presented similar arguments in his amendment of 2 December 2003, page 16, lines 13-20. The arguments were not

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persuasive then and remain unpersuasive. In addition, the Examiner notes that counsel's allegations of commercial success are not **evidence**². The Examiner respectfully directs applicant to MPEP 716.03 concerning required **nexus** between the claimed invention and any alleged commercial success.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Zurita whose telephone number is 571-272-6766. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Fadok can be reached on 571-272-6755. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James Zurita
Patent Examiner
Art Unit 3625
7 April 2006

James Zurita
Patent Examiner
Art 3625

² Evidence is something legally submitted to a tribunal to ascertain the truth of a matter. MERRIAM WEBSTERS Collegiate Dictionary.